



**<RULE>**

**<PREAMB>**

**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**48 CFR Parts 1509, 1527, and 1552**

**[EPA-HQ-OARM-2013-0224; FRL-9920-80-OARM]**

**Acquisition Regulation: Incorporation of Class Deviation to Notification of Conflicts of Interest Regarding Personnel and Project Employee Confidentiality Agreement**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to incorporate a class deviation to clause 1552.209-73, Notification of Conflicts of Interest Regarding Personnel, and 1552.227-76, Project Employee Confidentiality Agreement, and their respective prescriptions, to include Alternate 1 for the subcontract flow-down requirements for other than Superfund work. The class deviation to the two clauses was executed to address the increased use of these conflict of interest (COI) clauses in non-Superfund contracts to better protect the Agency from COI. The Superfund flow-down language in the basic clauses does not apply or relate to non-Superfund contracts and would likely be confusing if the Superfund specific language was not deleted. The rule also provides for minor administrative edits.

**DATES:** This final rule is effective on **[INSERT DATE 30 days from date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No.

EPA-HQ-OARM-2013-0224. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket Center is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Jared F. Van Buskirk, Policy, Training, and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202-564-3010; e-mail address: [vanbuskirk.jared@epa.gov](mailto:vanbuskirk.jared@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

EPA published a proposed rule in the **Federal Register** at 79 FR 49033, August 19, 2014, to update the EPAAR to incorporate a class deviation that was executed to add subcontract flow-down requirements for other than Superfund work to the two clauses: 1552.209-73 and 1552.227-76. The Agency's COI clauses are generally written to address COI for the Superfund programs. These two clauses are increasingly included in non-Superfund contracts to better protect the Agency from COI. No comments were received and no other changes were made to the proposed rule.

### **II. Statutory and Executive Order Reviews**

**A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:  
Improving Regulation and Regulatory Review**

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

**B. Paperwork Reduction Act**

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. No information is collected under this action.

**C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory  
Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.**

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute; unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today’s final rule on small entities, “small entity” is defined as: (1) A small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action

revises a current EPAAR provision and does not impose requirements involving capital investment, implementing procedures, or record keeping. This rule will not have a significant economic impact on small entities.

#### **D. Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector.

This rule contains no Federal mandates (under the regulatory provisions of the Title II of the UMRA) for State, Local, and Tribal governments or the private sector. The rule imposes no enforceable duty on any State, Local or Tribal governments or the private sector. Thus, the rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

#### **E. Executive Order 13132: Federalism**

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and Local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132.

**F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule does not have tribal implications as specified in Executive Order 13175.

**G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

Executive Order 13045, entitled “Protection of Children from Environmental Health and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12886, and (2) concerns an environmental health or safety risk that may have a proportionate effect on children. This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

**H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use**

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution of Use” (66 FR 28335 (MAY 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act of 1995 (NTTAA)**

Section 12(d) (15 U.S.C 272 note) of NTTA, Public Law 104-113, directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### **J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This rulemaking does not involve human health or environmental effects.

#### **K. Congressional Review Act**

The Congressional Review Act, [5 U.S.C 801](#) et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

#### **List of Subjects in 48 CFR Parts 1509, 1527, and 1552**

Government procurement.

Dated: December 1, 2014.

John R. Bashista,

Director, Office of Acquisition Management.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

#### **PART 1509—CONTRACTOR QUALIFICATIONS**

1. The authority citation for part 1509 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1509.507-2 is amended by revising paragraphs (a) and (b) and in paragraph (c) introductory text by removing the term ``simplified acquisition procedures" and adding in its place ``simplified acquisitions".

The revisions read as follows:

#### **1509.507-2 Contract clause.**

(a) The Contracting Officer shall include the clause at 1552.209-71, in all Superfund contracts

in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisitions for Superfund work. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (e).

(b) The Contracting Officer shall include the clause at 1552.209-73, in all solicitations and contracts for Superfund work in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisitions for Superfund work. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (d).

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#### **PART 1527—PATENTS, DATA, AND COPYRIGHTS**

3. The authority citation for part 1527 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Revise section 1527.409 to read as follows:

##### **1527.409 Solicitation provisions and contract clauses.**

The Contracting Officer shall insert the clause in 1552.227–76 in all Superfund solicitations and contracts in excess of the simplified acquisition threshold and, as appropriate, in simplified acquisitions for Superfund work. The clause may be used in other contracts if considered necessary by the Contracting Officer. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (d).

#### **PART 1552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. The authority citation for part 1552 continues to read as follows:

**Authority:** 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

6. Section 1552.209-73 is amended by removing the term “Project Officer” in paragraphs (b) and



(c) and adding in its place ``Contracting Officer's Representative" and adding Alternate I.

The addition reads as follows:

**1552.209-73 Notification of conflicts of interest regarding personnel.**

\* \* \* \* \*

Alternate I. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (d).

(d) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

7. Section 1552.227-76 is amended by adding Alternate I to read as follows:

**1552.227-76 Project employee confidentiality agreement.**

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Alternate I. Contracts for other than Superfund work shall include Alternate I in this clause in lieu of paragraph (d).

(d) The Contractor agrees to insert in each subcontract or consultant agreement placed hereunder provisions which shall conform substantially to the language of this clause, including this paragraph (d), unless otherwise authorized by the Contracting Officer.

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